

REMARKS

Claims 1-15 and 17-31 were examined and reported in the Office Action. Claims 1-15 and 17-31 are rejected. In response, Claims 1, 3, 7, 13 and 23 are amended, no claims are cancelled, and no claims are added. Applicant requests reconsideration of the application in view of the following remarks.

I. Claim Rejections Under 35 U.S.C. §112

Claims 1, 13, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, Applicant has amended Claims 1, 13, and 23 to read “capable of being programmed.” In view of the amendment to Claims 1, 13, 23, we submit that Claims 1, 13, and 23 particularly point out and distinctly claim the subject matter which applicant regards as the invention. Therefore, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. 112, second paragraph rejection of Claims 1, 13, and 23.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, Applicant has amended Claim 5 to read “the lower cylindrical inner wall.” In view of the amendment to Claim 5, we submit that Claim 5 particularly points out and distinctly claims the subject matter which applicant regards as the invention. Therefore, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. 112, second paragraph rejection of Claim 5.

Claim 7 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, Applicant has amended Claim 7 to read “the lower cylindrical wall of.” In view of the amendment to Claim 7, we submit that Claim 7 particularly points out and distinctly claims the subject matter which applicant regards as the invention. Therefore, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. 112, second paragraph rejection of Claim 7.

Claims 6 and 26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, Applicant has amended Claims 6 and 26 to read “the distance between the planar wall of the upper half-shell and an opposite planar wall of the lower half-shell.” In view of the amendment to Claims 6 and 26, we submit that Claims 6 and 26 particularly point out and distinctly claim the subject matter which applicant regards as the invention. Therefore, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. 112, second paragraph rejection of Claims 6 and 26.

Claim 23 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, Applicant has amended Claim 23 to read “enclosed without compression.” In view of the amendment to Claim 23, we submit that Claim 23 particularly points out and distinctly claims the subject matter which applicant regards as the invention. Therefore, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. 112, second paragraph rejection of Claim 23.

Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, Applicant has amended Claim 24 to read “internal projection that is provided by a projecting peripheral rim.” In view of the amendment to Claim 24, we submit that Claim 24 particularly points out and distinctly claims the subject matter which applicant regards as the invention. Therefore, Applicant respectfully requests reconsideration and withdrawal of the 35 U.S.C. 112, second paragraph rejection of Claim 24.

II. Claims Rejected Under 35 U.S.C. 102

Claims 1-7, 10, 12-15, 20, 23-27, 29 and 31 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent No. 5,347,262 to Thurmond et al. (“Thurmond”).

Claim 1 recites:

1. An electronic button tag for tagging and identifying cattle comprising a transponder, capable of being programmed, enclosed in a shell, said shell comprising an open-ended or blind axial transverse passage for a fixing

means to the ear of the animal, wherein the shell is made from two half-shells namely a lower half-shell and an upper half-shell, which are assembled together at a median plane which is disposed transversely to the axial passage opening for the fixing means, and the transponder is enclosed within the two half-shells.

Thurmond is generally directed to a pin-and-clutch theft-deterrent device that enables instantaneous detection of separation-force tampering with the theft-deterrent device. (See Abstract.) In contrast with Claim 1, Thurmond does not disclose or suggest a programmable transponder enclosed in a shell, said shell comprising an open-ended or blind axial transverse passage for a fixing means to the ear of the animal, wherein the shell is made from two half-shells namely a lower half-shell and an upper half-shell, as in Claim 1. Thurmond does disclose a first component 10 that includes a member 24 that contains two fragile elongated glass vials 20 that fracture when at least a predetermined pressure is applied thereto, and emits a detrimental substance 22 that would damage the protected article 18 if the vial were to be fractured while the theft-deterrent device is attached to the article 18 (see col. 5, lines 44-51), however, that is something completely different from a programmable transponder enclosed in a shell, said shell comprising an open-ended or blind axial transverse passage for a fixing means to the ear of the animal, wherein the shell is made from two half-shells namely a lower half-shell and an upper half-shell, as in Claim 1.

Furthermore, in the diagram shown at page 5 of the Office Action, the Examiner has shown the fixing means 10 as forming part of the lower half-shell. However, the fixing means 10 is not a part of the lower half-shell, it is simply the means by which the transponder carrying element 60 is attached to the product to which the product is to be mounted. We submit that element 58 is simply a cover and does not comprise a half shell; namely, the fixing means 10 of Thurmond does not disclose or suggest a shell comprising an open-ended or blind axial transverse passage for a fixing means to the ear of the animal, wherein the shell is made from two half-shells namely a lower half-shell and an upper half-shell, as in Claim 1.

For each of the above reasons, therefore, Claim 1, and all claims which depend from Claim 1, are patentable over the prior art reference to Thurmond as well as the references of record. Therefore, Applicants respectfully request that the Examiner reconsider and withdraw the §102(b) rejection of Claim 1.

Each of Applicants' other independent claims contains limitations similar to those highlighted above in Claims 1. Therefore, all of Applicants' other independent claims, and all claims which depend on them, are patentable over the cited art, for similar reasons. Consequently, Applicants respectfully request that the Examiner reconsider and withdraw the §102(b) rejection of Claims 2-7, 10, 12-15, 20, 23-27, 29 and 31.

DEPENDENT CLAIMS

In view of the above remarks, a specific discussion of the dependent claims is considered to be unnecessary. Therefore, Applicant's silence regarding any dependent claim is not to be interpreted as agreement with, or acquiescence to, the rejection of such claim or as waiving any argument regarding that claim.

CONCLUSION

In view of the foregoing, it is believed that all claims now pending (1) are in proper form, (2) are neither obvious nor anticipated by the relied upon art of record, and (3) are in condition for allowance. A Notice of Allowance is earnestly solicited at the earliest possible date. If the Examiner believes that a telephone conference would be useful in moving the application forward to allowance, the Examiner is encouraged to contact the undersigned at (310) 207-3800.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly, extension of time fees.

PETITION FOR EXTENSION OF TIME

Per 37 C.F.R. 1.136(a) and in connection with the Office Action mailed on September 13, 2007, Applicant respectfully petitions the Commissioner for a three (3) month extension of time, extending the period for response to March 13, 2008. The Commissioner is hereby authorized to charge payment to Deposit Account No. 02-2666 in the amount of \$1050.00 to cover the petition filing fee for a 37 C.F.R. 1.17(a)(3) small entity. A duplicate copy of this sheet is enclosed.

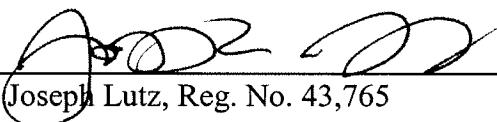
Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR, & ZAFMAN LLP

Dated:

3/12/08

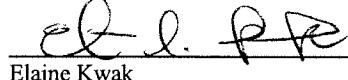
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CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below to the United States Patent and Trademark Office.


Elaine Kwak

3/12/08
Date